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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,341	01/25/2005	Michael Kock	532622010400	5941
	7590 02/06/200 OVE LODGE & HUT	EXAMINER		
P O BOX 2207 WILMINGTON, DE 19899			ZHENG, LI	
			ART UNIT	PAPER NUMBER
			1638	
SHORTENED STATUTORY	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE	
31 DA	AYS	02/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<u>-</u>		Application No.	Applicant(s)		
Office Action Summary		10/522,341	KOCK ET AL.		
		Examiner	Art Unit		
		Li Zheng	1638		
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the o	correspondence address		
A SHOWHIC - Exter after - If NO - Failu Any r	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DATES as ions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. period for reply is specified above, the maximum statutory period were to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tir rill apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).		
Status		•			
2a) <u></u> □	Responsive to communication(s) filed on <u>07 M</u> . This action is FINAL . 2b)⊠ This Since this application is in condition for allowar closed in accordance with the practice under E	action is non-final. nce except for formal matters, pro			
Dispositi	on of Claims				
5) □ 6) □ 7) □ 8) ☑ Applicati	Claim(s) 1-31 is/are pending in the application. 4a) Of the above claim(s) is/are withdray Claim(s) is/are allowed. Claim(s) is/are rejected. Claim(s) is/are objected to. Claim(s) 1-31 are subject to restriction and/or e on Papers The specification is objected to by the Examine The drawing(s) filed on is/are: a) access	vn from consideration. election requirement.	Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority u	nder 35 U.S.C. § 119		,		
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
2) Notice 3) Information	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO/SB/08) ' No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Do 5) Notice of Informal F 6) Other:	ate		

DETAILED ACTION

Claim 7 is objected because the recitation, "in any of claims 1 to 6 claim1", appears to have cleric errors.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10, 21-26, drawn to a process for preparing transformed plant cells or organisms.

Group II, claim(s) 11, drawn to a amino acid sequence of a plant 5methylthioribose kinase.

Group III, claim(s) 12, drawn to a nucleotide sequence encoding 5methylthioribose kinase.

Group IV, claim(s) 13-17,27-31, drawn to a dsRNA or vector containing said dsRNA.

Group V, claim(s) 18-20, drawn to transgenic plant expressing said dsRNA.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking the inventions of Groups I-V is a marker gene capable of directly or indirectly causing a toxic effect. However, such marker gene is anticipated by Gleave et al (1999, Plant Molecular Biolog 40: 223-235). Gleave et al. teach that cytosine deaminase (coda) gene is capable of converting the non-toxic 5-fc to toxic 5-fluorouracil in plant. Therefore this technical feature does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

1) different compounds of X listed in claim 4; 2) different corresponding marker proteins listed in claims 5, 21 and 23; 3) different plant species listed in claim 19.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims

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subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claims 1, 2, and 3.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the technical feature linking those species is marker gene capable of directly or indirectly causing a toxic effect. The substance X and the gene both are anticipated by Gleave et al. as discussed above.

Applicants are reminded that different nucleotide sequences and amino acid sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute different inventive concepts.

For invention groups I, IV and V, restriction to one of the GenBank Accession No.s in claim 6, part a), one of the corresponding nucleotide sequences of SEQ ID NO: 2-48 is also required.

For invention group II, restriction to one of the corresponding polypeptide sequences of SEQ ID NO: 60-68 is also required.

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For invention group III, restriction to one of the corresponding nucleotide sequences of SEQ ID NO: 59-67 is also required.

Claims that do not read on the elected nucleotide sequence or polypeptide sequence will be considered withdrawn. Applicant is advised that a reply to this requirement must include an identification of the nucleotide sequence or polypeptide sequence that is selected. An election that does not identify the nucleotide sequence or polypeptide sequence will be considered nonresponsive. This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Zheng whose telephone number is 571-272-8031.

The examiner can normally be reached on Monday through Friday 9:00 AM - 5:30 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ELIZABETH MCELMAN PRIMARY EXAMINER